

Brandon Burgess  
Chairman and Chief Executive Officer



April 27, 2012

Chairman Julius Genachowski  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Federal Communications Commission  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

Re: Continuation of Cable Viewability Requirements for Digital Television  
Stations  
MB Docket No. 98-120

Dear Chairman and Commissioners,

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, ION Media Networks, Inc. ("ION"), licensee of the television stations listed on Attachment A, writes in strong support of the FCC's proposals to extend for three additional years both the "viewability" rule for cable carriage of over-the-air DTV signals and the small cable system HD exemption.<sup>1</sup>

As an initial matter, it must be noted that the continuation of the viewability requirement is unambiguously mandated by the plain meaning of the statute and by the clear intent of Congress. These critical carriage requirements have been upheld by the Supreme Court and cannot be ignored in this proceeding.<sup>2</sup> As the Commission recognized when it adopted the viewability requirement in 2007 and reaffirmed in the *Notice*, cable operators are required by Section 614(b)(7) of the Communications Act to provide all their subscribers with a viewable signal for all mandatory carriage stations.<sup>3</sup> The statute has not changed since 2007 and both cable operators and the Commission remain bound by law to ensure that must-carry signals are provided to all cable subscribers – including those that continue to receive analog cable service.

<sup>1</sup> See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Fourth Further Notice of CS Docket No. 98-120, FCC 12-18 (rel. Feb. 10, 2012) (the "Notice"). See also 76.56(d)(3), (5); Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, Fourth Report and Order, 23 FCC Rcd 13618 (2008).

<sup>2</sup> *Turner Broadcasting Systems, Inc. v. FCC*, 520 US 180 (1997).

<sup>3</sup> See 47 U.S.C. § 534(b)(7); See Carriage of Digital Television Broadcast Signals, CS Docket No 98-120, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 22 FCC Rcd 21064 para. 15, 16 (2007) ("Viewability Order").

The consumer need for continuation of the viewability requirement is equally compelling. The viewability rule is extremely critical to ensuring that more than 12 million analog-only cable television customers continue receiving their full complement of local over-the-air television channels. Congress adopted Section 614(b)(7) to protect these customers from cable operator efforts to drop local broadcast signals. Discontinuing the viewability rule would ignore Congress's intent and deprive millions of viewers of the local television service they rightfully expect. Consumers' only choice if they want to retain their full complement of local broadcast services would be to upgrade to more expensive digital cable services. That is precisely the situation Congress sought to eliminate when it adopted the requirement that cable operators provide all must-carry signals to every subscriber. Congress has spoken clearly on behalf of consumers and the viewing public on this issue.

Undermining, in any way, the existing viewability rule also would improperly incentivize a slower transition to digital service. Broadcasters faced with a government mandate spent many billions of dollars transitioning to digital television instantaneously on June 12<sup>th</sup> 2009. Broadcasters providing their digital services should not be punished with a loss of viewers as a consequence of other parts of the ecosystem not completing the transition, particularly large and powerful and well funded entities. Again, we stand by and fully support the exemption for small system operators. In fact, being an independent ourselves, we know how challenging it can be to compete in an exceedingly consolidated marketplace. To the extent the viewability rules place a hardship on smaller cable operators, ION fully supports continuation of the HD exemption, but prematurely compromising basic over-the-air signal viewability for analog subscribers on a large scale would unnecessarily punish over 10% of the U.S. population in a way that Congress clearly instructed us all to avoid. As long as operators continue to employ analog transmission technology, the viewability rule will remain necessary to ensure that analog subscribers have access to broadcast signals as Congress intended.

This issue is of particular importance to ION and its viewers across the country. ION is the last remaining truly independent national broadcast network and is unaffiliated with any domestic or foreign media conglomerate. We have long-standing positive relations with our distributors and can work with them very effectively through any issues they may face. As we made clear in our presentations to the Commission and the staff, if the FCC, and therefore, by necessity, Congress, show an appetite to holistically examine the premises of must-carry/retransmission consent regime, we will be as open minded as any broadcasters you will encounter. We have no objection to a performance and consumer based examination of the doctrine. But, given the current overly consolidated marketplace that is largely hostile to independents, we will vigorously oppose a latent hollowing of what amounts to 10-20% of the must-carry doctrine without examining and, in parallel, adjusting the corresponding retransmission consent rules.

While some cable operators in ION markets have moved to all-digital delivery of cable services, many more have not. Since ION's stations reach more than 99 million homes in the U.S., literally millions of cable subscribers depend on cable operator compliance with the viewability rule to receive ION programming. The

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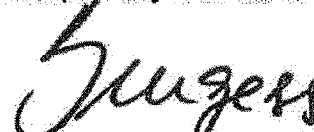
advertising revenues generated by ION's stations depend on delivery of ION's signals to all the viewers in all its markets. ION uses that revenue to fund its proactive DTV strategy that seeks to make full use of the versatility of DTV broadcasting through a mix of HD content, multicast programming streams, and mobile video applications. The fruits of ION's efforts include its flagship general entertainment channel; multicast feeds of ION Life, a health, wellness, and lifestyle channel, and qubo, a 24-hour children's programming network; and the promotion and roll-out of mobile DTV services through active membership in the Open Mobile Video Coalition. All of these efforts depend in large part on cable operators' continued delivery of a viewable ION signal to all of their subscribers.

ION's reliance on cable carriage for execution of its DTV business plan is by no means unique. Indeed, the *Notice* recognizes that as of 2010, 40% of broadcasters elected mandatory carriage of their signals on local cable systems. Each of these television stations depends upon cable operator delivery of a viewable signal to all their subscribers.

While continuation of the viewability requirement undoubtedly places a minor burden on cable operators, Congress and the Commission already have been solicitous of that burden by imposing the 1/3 channel capacity cap on the amount of bandwidth cable operators must dedicate to must-carry stations. And the Commission has further ameliorated the burden that mandatory carriage places on cable operators by adopting the small-system exemption for cable carriage of HD signals. ION supports continuation of both these policies, but consistent with Congress's express requirements under Section 614, cable operators must continue to provide viewable signals of local must-carry television stations to all subscribers, digital and analog.

Finally, as the *Notice* recognizes, expiration of the viewability rule will not relieve cable operators of the statutory requirement under the Act of delivering viewable signals to all analog cable subscribers.<sup>4</sup> The only thing that will change will be the method of enforcement – if the rule expires, stations will be required to bring carriage complaints if cable operators fail to deliver viewable signals to analog subscribers. It would be quintessentially bad policy to eliminate the clear viewability rule in preference for case-by-case adjudication that would consume Commission and broadcaster resources to resolve an issue that Congress made clear and explicit. By far the better outcome is to maintain the viewability order until such time as cable operators join broadcasters in completing the transition to digital television.

Respectfully submitted,



Brandon Burgess  
Chairman and CEO

<sup>4</sup>

*Notice* at para. 10

## ATTACHMENT A

ION Media Networks, Inc.

### Full Power Television Stations

<u>Call Letters</u>	<u>FCC City of License</u>	<u>Nielsen DMA</u>
WPXN-TV	New York City	New York City
KPXN-TV	San Bernardino, CA	Los Angeles
WCPX-TV	Chicago, Illinois	Chicago
WPPX-TV	Wilmington, Delaware	Philadelphia
KKPX-TV	San Jose, California	San Francisco
WBPX-TV	Boston, MA	Boston
WDPX-TV	Vineyard Haven, MA	Boston
WPXG-TV	Concord, NH	Boston
KPXD-TV	Arlington, Texas	Dallas
WPXW-TV	Manassas, Virginia	Washington, D.C.
WWPX-TV	Martinsburg, WV	Washington, D.C.
WPXA-TV	Rome, Georgia	Atlanta
WPXD-TV	Ann Arbor, Michigan	Detroit
KPXB-TV	Conroe, Texas	Houston
KWPX-TV	Bellevue, Washington	Seattle
WXPX-TV	Bradenton, Florida	Tampa
KPXM-TV	St. Cloud, Minnesota	Minneapolis
WWPX-TV	Akron, Ohio	Cleveland
KPPX-TV	Tolleson, Arizona	Phoenix
WPXM-TV	Miami, Florida	Miami
KPXC-TV	Denver, Colorado	Denver
KSPX-TV	Sacramento, California	Sacramento
WOPX-TV	Melbourne, Florida	Orlando
KPXG-TV	Salem, Oregon	Portland
WINP-TV	Pittsburgh, PA	Pittsburgh
WIPX-TV	Bloomington, IN	Indianapolis
WHPX-TV	New London, CT	Hartford
WRPX-TV	Rock Mount, NC	Raleigh
WFPX-TV	Fayetteville, NC	Fayetteville, NC
WNPX-TV	Cookeville, Tennessee	Nashville
WPXE-TV	Kenosha, WI	Milwaukee
KPXE-TV	Kansas City, Missouri	Kansas City
KUPX-TV	Provo, Utah	Salt Lake City
KPXL-TV	Uvalde, Texas	San Antonio
WZPX-TV	Battle Creek, MI	Grand Rapids
WPXP-TV	Lake Worth, Florida	West Palm Beach
WPXH-TV	Gadsden, Alabama	Birmingham
WPXV-TV	Norfolk, Virginia	Norfolk
WPXJ-TV	Batavia, New York	Buffalo

Call Letters

KOPX-TV  
WGPX-TV  
WPXQ-TV  
WPXC-TV  
WPXX-TV  
WPXL-TV  
WQPX-TV  
WYPX-TV  
KTPX-TV  
WLPX-TV  
WPXK-TV  
WUPX-TV  
WPXR-TV  
KPXO-TV  
KFPX-TV  
KGPX-TV  
WSPX-TV  
KPXR-TV  
WEPX-TV  
WPXU-TV  
WTPX-DT

FCC City of License

Oklahoma City, Oklahoma  
Burlington, North Carolina  
Block Island, RI  
Brunswick, GA  
Memphis, TN  
New Orleans, LA  
Scranton, Pennsylvania  
Amsterdam  
Okmulgee, Oklahoma  
Charleston, West Virginia  
Jellico, Tennessee  
Morehead, Kentucky  
Roanoke, Virginia  
Kaneohe, Hawaii  
Newton, Iowa  
Spokane, Washington  
Syracuse, New York  
Cedar Rapids, Iowa  
Greenville, NC  
Jacksonville, NC  
Antigo, Wisconsin

Nielsen DMA

Oklahoma City  
Greensboro  
Providence  
Jacksonville, FL  
Memphis  
New Orleans  
Wilkes Barre  
New York, Albany  
Tulsa  
Charleston  
Knoxville  
Lexington  
Roanoke  
Honolulu  
Des Moines  
Spokane  
Syracuse  
Cedar Rapids  
Greenville-New Bern, NC  
Greenville-New Bern, NC  
Wausau